

6791 - *a*
RECORDATION NO. _____ Filed & Recorded
NOV 9 1972 - 3 12 PM
~~NOT TO BE RECORDED~~

LEASE OF RAILROAD EQUIPMENT

Dated as of October 2, 1972

between

**RICHARDSON DILWORTH and
ANDREW L. LEWIS, JR.,
Trustees of the Property of Reading Company**

and

**THE FIRST PENNSYLVANIA
BANKING AND TRUST COMPANY,
as Trustee**

LEASE OF RAILROAD EQUIPMENT dated as of October 2, 1972, between RICHARDSON DILWORTH and ANDREW L. LEWIS, JR., Trustees of the Property of Reading Company (hereinafter called the Debtor) (such Trustees together with their successors and assigns being hereinafter called the Trustees or collectively called the Lessee), and THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, a Pennsylvania corporation (hereinafter called the Lessor), as Trustee under a trust agreement dated as of the date hereof with THE FIFTH THIRD BANK and PIONEER TRUST & SAVINGS BANK, as beneficiaries (hereinafter individually called a Beneficiary and collectively called the Beneficiaries).

WHEREAS, on the 23rd day of November, 1971, the Debtor filed a petition for reorganization under Section 77 of the Bankruptcy Act in the United States District Court for the Eastern District of Pennsylvania and such petition was duly approved as properly filed by order entered on said date by said Court (the proceedings with respect thereto being hereinafter called the Reorganization Proceedings), and the Trustees were duly qualified as trustees of the property of the Debtor on January 24, 1972;

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Document) with RYDAL EQUIPMENT Co. (hereinafter called the Builder), wherein the Builder has agreed to acquire or construct, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Builder has assigned or will assign its interest in the Security Document to INDUSTRIAL VALLEY BANK AND TRUST COMPANY, as agent (hereinafter,

together with its successors and assigns, referred to as the Vendor) pursuant to an Agreement and Assignment (hereinafter called the Assignment) dated as of the date hereof, between the Builder and the Vendor, a copy of which has been delivered to the Lessor and the Lessee); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered, accepted and first put into service by it on or before December 31, 1972, and settled for under the Security Document on or prior to February 1, 1973 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Security Document, subject to all the rights and remedies of the Vendor under the Security Document:

§ 1. *Incorporation of Model Provisions.* Whenever this Lease incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Lease Provisions" annexed to the Security Document as Part II of Annex C thereto (hereinafter called the Model Lease Provisions), such provision of the Model Lease Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this Lease except that any reference to the "Security Documents" in the plural shall be deemed to mean the Security Document in the singular.

§ 2. *Delivery and Acceptance of Units.* § 2 of the Model Lease Provisions is herein incorporated as § 2 hereof.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 30 consecutive semiannual payments, payable on January 1 and July 1 in each year commencing with July 1, 1973. The first such semiannual payment shall be in an amount equal to .024737% of the Purchase Price (as defined in the Security Document) of each Unit settled for under the Security Document for each day elapsed from and including the date such Unit is settled for under the Security Document to July 1, 1973, plus 1.29544% of the Purchase Price of each Unit subject to this Lease on July 1, 1973. The next 29 semiannual payments shall each be in an amount equal to 5.7480% of the Purchase Price of each Unit subject to this Lease on each such date.

All payments provided for in this Lease shall be made for the account of the Lessor, in care of the Vendor, at Old York Road and West Avenue, Jenkintown, Pennsylvania 19046, in immediately available Philadelphia funds.

On or before the date upon which payments to the Vendor under the Security Document are due and owing, the Vendor is hereby authorized to apply funds received hereunder to satisfy the obligations of the Lessor under the Security Document due and payable at the time (or within 15 days thereafter) such payments are due hereunder and, so long as no event of default under the Security Document shall have occurred and be continuing, any balance shall be promptly paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by rea-

son of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Document, including the Lessee's rights by subrogation under Article 8 thereof, or the Builder or the Vendor or otherwise, provided that nothing herein shall be deemed to impair the Lessee's right to assert and sue upon such claims in separate actions; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

The obligations to make rental and other payments under this Lease will constitute expenses of administration of the Lessee, and will rank equally and ratably in priority of payment with all other expenses of administration of the Lessee, except trustees' certificates heretofore or hereafter issued by the Lessee.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Security Document in its capacity as Guarantor or otherwise, are subject to the rights of the Vendor under the Security Document. If an event of default should occur under the Security Document, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Security Document.

§ 5. *Identification Marks.* § 5 of the Model Lease Provisions is herein incorporated as § 5 hereof. The Lessor hereby designates the markings provided for in Section 5 of the Assignment as appropriate markings.

§ 6. *Taxes.* § 6 of the Model Lease Provisions is herein incorporated as § 6 hereof.

§ 7. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such oc-

currences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor a sum equal to the semiannual rental payment with respect to such unit plus the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit as of any semiannual rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date (such numbers commencing with the payment due on July 1, 1973).

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	113.2145 %	16	73.16345%
2	114.3284	17	69.54322
3	114.9151	18	65.77543
4	115.0069	19	61.85633
5	114.5645	20	57.80100
6	108.9541	21	53.60597
7	107.4700	22	49.28660
8	105.4788	23	44.83969
9	103.2283	24	40.28091
10	96.12693	25	35.60735
11	93.50396	26	30.81603
12	90.70702	27	25.90391
13	87.73198	28	20.86782
14	79.92695	29	15.70454
15	76.62131	30 and	
		thereafter ..	15.00000

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee hereby assigns any and all rights to receive payment in settlement for destruction of any Unit by another carrier (hereinafter called the Settlement) to the Lessor. The Lessor hereby directs the Lessee to collect and receive such Settlement in trust for and for the benefit of the Lessor, and, to the extent such Settlement does not exceed the payments due to the Lessor in respect of a Casualty Occurrence of such Unit or Units for which the Settlement is made, to pay such Settlement over to the Lessor. The Lessor agrees to apply such Settlement, to the extent received, towards the satisfaction of Lessee's obligation to make payment to the Lessor in respect of a Casualty Occurrence of the Unit or Units for which Settlement is made, and the Lessee shall be entitled to any excess of such Settlement over such obligation.

§ 8. *Annual Reports.* § 8 of the Model Lease Provisions is herein incorporated as § 8 hereof.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* § 9 of the Model Lease Provisions is herein incorporated as § 9 hereof.

§ 10. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur and be continuing:

A. default shall be made in payment of any part of the rental provided in § 3 hereof and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Document and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. a decree or order is entered in the Reorganization Proceedings preventing or disabling the Trustees from performing any of their obligations under this Agreement; or

E. if the obligations of the Trustees hereunder are assumed by a corporation or by the Debtor's successor pursuant to a plan of reorganization for the Debtor approved in the Reorganization Proceedings (such corporation or successor being hereinafter called the Successor) and either

(i) A petition for reorganization under Section 77 of the Bankruptcy Act as now constituted or as said Section 77 may be hereafter amended shall be filed by or against the Successor, and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the assumed obligations of the Successor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status

as obligations incurred by such a trustee or trustees within 30 days after such appointment (whether or not such appointment is subject to confirmation or ratification), if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(ii) Any proceedings shall be commenced by or against the Successor for any relief which includes, or might result in, modification of the assumed obligations of the Successor under this Agreement under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Successor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Successor or for the property of the Successor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment (whether or not such appointment is subject to confirmation or ratification), if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by

the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a 10% per annum

discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes that would be required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, calculated on the assumption that the Lessor's Federal, state and local taxes computed by reference to net income or excess profits are based on a 48% effective Federal tax rate and the highest effective state and local income tax and/or excess profit tax rates generally applicable to the Lessor, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and deducting (to the extent at that time permitted by Federal Law) from any such Federal tax 48% of the amount of any such state and local tax (such rates as so calculated being herein-after in this Agreement called the Assumed Rates), shall be equal to such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return (taxes being calculated at the Assumed Rates) under this Lease, after taking into account all payments made under this clause (b), to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if this Lease had continued in effect for the full term described in § 4 hereof, and if the Lessor had been entitled to utilization of all or such portion of any depreciation or amortization deduction, or any credit (including investment tax cred-

it), with respect to each Unit provided for in the Internal Revenue Code, as amended, which was lost, not claimed, not available for claim, disallowed or recaptured in respect of such Unit as a result of the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default. "Lessor's net return", as used herein, shall be determined on the basis of, and consistent with, the after-tax yield calculations in fact utilized by the Lessor in determining the acceptability to it of the rental set forth in § 3 hereof.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. *Return of Units Upon Default.* § 11 of the Model Lease Provisions is herein incorporated as § 11 hereof,

except that the term "Lessee" as used therein shall include the Debtor as well as the Lessee.

§ 12. *Assignment; Prohibition Against Liens; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Beneficiaries and of the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall include the Beneficiaries and any assignees thereof and, where the context so requires (including but not limited to certain of the provisions of § 10 and all of the provisions of § 17 hereof), shall refer only to the Beneficiaries or such assignees.

So long as the Lessee shall not be in default under this Lease or under the Security Document in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Document, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as hereinafter provided in this § 12. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. The Lessee

shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease or under the Security Document in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it, the Debtor or any affiliate upon lines of railroad owned or operated by it or the Debtor or any such affiliate or upon lines of railroad over which the Lessee or the Debtor or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Security Document; *provided, however*, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Document) into or with which the Debtor shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Debtor.

The Reorganization Proceedings shall not be dismissed or terminated nor shall the property of the Debtor be sur-

rendered by the Trustees or their successor or successors, unless, (a) as a condition of such dismissal or termination or such surrender, all of the obligations then existing or to accrue of the Trustees under this Lease shall be assumed as a general obligation by the Debtor's successor pursuant to a plan of reorganization approved in the Reorganization Proceedings or by any other railroad corporation acquiring all or substantially all of the lines of railroad of the Debtor or as an obligation, having the same status and priorities as those of the Trustees under this Agreement, by any receiver or receivers in equity, or trustee or trustees, that shall succeed the Trustees, or (b) payment in full in cash (or provision therefor satisfactory to the Lessor and the Vendor) is made to the Vendor of the Casualty Value of the Equipment and all damages, claims, or any other moneys payable to or in favor of the Lessor and/or the Vendor pursuant to this Lease or the Security Document, together with interest thereon as herein provided to the date of payment thereof.

In case of any sale or conveyance of all or substantially all of the lines of railroad of the Debtor the purchaser, or transferee of the purchaser, shall not be at liberty to refuse to accept performance of this Lease or to disaffirm it and any such purchaser and any such transferee shall assume and agree to perform each and all of the obligations of the Trustees hereunder, unless provision is made for the payment to the Vendor as provided above in clause (b) of the next preceding paragraph.

Whenever used in this Lease, the term "Trustees" shall be deemed to mean any corporation (including the Debtor), receiver or receivers in equity, trustee or trustees, purchaser or transferee of any purchaser which shall have assumed and agreed to perform each and all of the obligations and covenants of the Trustees hereunder.

§ 13. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond December 31, 1997, at a rental payable in 10 semiannual payments, each in an amount equal to the "Fair Market Rental"; such semiannual payments to be made on January 1 and July 1 in each year of the applicable extended term or (b) to purchase all, but not fewer than all, the Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value or Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user or lessee, as the case may be (other than (i) a lessee currently in possession and (ii) a used equipment dealer), and an informed and willing seller or lessor, as the case may be, under no compulsion to sell or lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Market Rental, as the case may be, of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee

may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

In the event the Lessee elects to purchase the Equipment, upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

§ 14. *Return of Units upon Expiration of Term.* § 14 of the Model Lease Provisions is herein incorporated as § 14 hereof, except that the term Lessee as used therein shall include the Debtor as well as the Lessee.

§ 15. *Opinion of Counsel.* On each Closing Date (as defined in the Security Document), the Trustees will deliver to the Lessor a counterpart of the written opinion of counsel for the Trustees, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, to the effect set forth in Section 6(g) of the Assignment and to the further effect that:

A. the Lease has been duly authorized by the Court upon due notice and duly executed and delivered by the Trustees and constitutes a valid, legal and binding agreement of the Trustees, enforceable in accordance with its terms;

B. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Lessor in and to the Units; and

C. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease by the Trustees.

§ 16. *Recording; Expenses.* § 16 of the Model Lease Provisions is herein incorporated as § 16 hereof.

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof or subsequently (hereinafter called the Code), to an owner of property, including (without limitation) any investment tax credit with respect to the Units.

Lessee agrees that neither it nor the Debtor will at any time take any action or file any returns or other documents inconsistent with the foregoing. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the benefit of any amortization or depreciation deduction or tax credit which may be available from time to time with respect to the Units.

If (other than for the reasons set forth in the fourth paragraph of this § 17) the Lessor shall lose, or shall not

have or shall lose the right to claim, or if (other than for such reasons) there shall be disallowed with respect to the Lessor, all or any portion of the tax credits or amortization or depreciation deductions based on a depreciable life of not more than 11 years with respect to any Unit and based on the original use of such Unit having commenced with the Lessor, the rental rate set forth in § 3 and the Casualty Values set forth in § 7 of this Lease applicable to such Unit shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such credits or amortization or depreciation deductions have not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return (after all income taxes at the Assumed Rates, including any penalties thereon) in respect of such Unit under this Lease to equal the net return (after all income taxes at the Assumed Rates, including any penalties thereon) that would have been available if the Lessor had been entitled to utilization of all or such portion of such credits or amortization or depreciation deductions which were not claimed or were disallowed and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of such credits or amortization or depreciation deductions. "Lessor's net return", as used herein, shall be determined on the basis of, and consistent with, the after-tax yield calculations in fact utilized by the Lessor in determining the acceptability to it of the rental rate set forth in § 3 hereof.

The rental rate and Casualty Values shall not be increased as hereinabove provided in this § 17 to the extent that the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have been dis-

allowed with respect to the Lessor, all or any portion of such credits or amortization or depreciation deductions with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer by the Lessor of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Security Document without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim the same in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming the same; or

(v) the failure of the Lessor to have sufficient income or income tax to benefit from such credits or depreciation.

The Lessor agrees that if, in the opinion of its independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of such credits or amortization or depreciation deductions on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In

the latter event, the Lessee shall advance to the Lessor, without interest, sufficient funds to make such payment. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease, and there shall be made all necessary retroactive adjustments in the rentals and Casualty Values theretofore paid in order to carry out the intent of this § 17, which adjustments shall, forthwith following the determination of the amounts thereof, be paid by the Lessee by means of one lump sum payment.

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to $11\frac{1}{4}\%$ per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 15th and Chestnut Streets, Philadelphia, Pennsylvania 19101, attention of Corporate Trust Department; and

(b) if to the Lessee, at Reading Terminal, 12th and Market Streets, Philadelphia, Pennsylvania 19107, attention of Secretary and Treasurer.

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Severability; Effect and Modification of Lease.*

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and of the Lessee or its duly authorized representative.

§ 21. *Other Obligations.* Lessee agrees that, during the term of this Lease, Lessee will not assume or enter into any other leases of equipment, equipment trust agreements, conditional sale agreements or other liabilities or obligations in connection with the leasing or financing of the acquisition of equipment or other tangible personal property, (i) if such liabilities or obligations would be entitled, directly or indirectly, to any priority in right of payment over the obligations of the Lessee under this Lease, or (ii) if such liabilities or obligations would be secured, directly or indirectly, by any mortgage, lien or other security interest in property of the Debtor or Lessee (except the equipment or other property involved in the particular transaction) unless the obligations of the Lessee under this Lease are equally and ratably secured thereby, provided that nothing herein shall restrict the right of the Trustees to issue and sell trustees' certificates for any proper purpose.

§ 22. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together

shall constitute but one and the same instrument. Although this Lease is dated as of October 2, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 23. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania, *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

THE FIRST PENNSYLVANIA BANKING
AND TRUST COMPANY, as Trustee;

by
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

Richardson Dilworth [SEAL]

Witness:

Richardson Dilworth

.....
Witness:

..... [SEAL]
Andrew L. Lewis, Jr.

.....
Witness:

As Trustees of the Property
of Reading Company and
not individually.

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this *8th* day of November, 1972, before me personally appeared *C. D. Jassett*, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth J. Sabedra
Notary Public

[NOTARIAL SEAL]

Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires March 1, 1976

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this *6th* day of November, 1972, before me personally appeared RICHARDSON DILWORTH and ANDREW L. LEWIS, JR., Trustees of the Property of Reading Company, signers and sealers of the foregoing instrument, and they acknowledged the same to be their free act and deed, as such Trustees, before me.

Richard H. Williams
Notary Public

[NOTARIAL SEAL]

Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 17, 1974

